

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JUAN MEDINA,

Plaintiff,

v.

UNITED STATES, and SHANE
INNES, SR., and JACKIE INNES,
and their marital community,
dba INNES WOOD PRODUCTS,

Defendants.

NO. CV-11-0280-LRS

ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO FILE
AMENDED COMPLAINT

BEFORE THE COURT are the following motions: Plaintiff's Motion for Leave to File Amended Complaint (ECF No. 30) filed January 9, 2012; Defendant United States' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment (ECF No. 9), filed December 29, 2012; and Defendants Shane and Jackie Innes *pro se* Motion to Dismiss for Lack of Subject Matter (ECF No. 7), filed on September 6, 2011. The United States' Motion to Dismiss/Summary Judgment motion was heard with oral argument on December 15, 2011, however, the motion was deferred based on plaintiff's request for further briefing on what plaintiff felt were new issues that surfaced during briefing of the motion. The remaining motions were noted without oral argument.

/ / /

/ / /

1 **I. Introduction**

2 Plaintiff filed this suit in the district court on July 29, 2011.
3 Defendant United States filed a motion to dismiss or in the
4 alternative, a motion for summary judgment on October 11, 2011. ECF
5 No. 10. On October 31, 2011, Plaintiff filed his response. ECF No. 15.
6 Defendant United States filed its reply on November 14, 2011. ECF No.
7 22. In that reply, Defendant United States addressed the issues
8 related to theories of recovery forwarded by Plaintiff in his
9 response: (1) negligent supervision of an inherently dangerous
10 activity; and (2) negligent signing of a contract. On November 29,
11 2011, Plaintiff requested additional time to respond to what Plaintiff
12 believed were new issues raised by Defendant United States in its
13 reply brief. ECF No. 23. The Court granted Plaintiff's request and on
14 December 9, 2011, Plaintiff filed his Response to United States'
15 Reply. ECF No. 27.

16 At the hearing on December 15, 2011, Plaintiff requested
17 additional time to provide briefing, indicating he did not have enough
18 time to respond to the United States' reply. The Court allowed
19 Plaintiff until December 29, 2011 to file additional briefing, but
20 limited the briefing to issues that Plaintiff believed he was not able
21 to address in his supplemental response brief filed on December 9,
22 2011. Plaintiff filed his second supplemental response to the United
23 States motion to dismiss/summary judgment on December 29, 2011. ECF
24 No. 29. On January 5, 2012, the United States filed its reply to
25 Plaintiff's second supplemental response. ECF No. 33. A decision on
26 the government's motion is now pending.

1 On January 4, 2012, Plaintiff filed his motion seeking leave to
2 amend the complaint. ECF No. 30. Plaintiff now seeks to amend his
3 complaint to include additional causes of action against the Federal
4 Defendants and to restate one of his current causes of action to more
5 accurately reflect recognized theories of recovery in the State of
6 Washington. ECF No. 32, at 2.

7 **II. Discussion**

8 "Under the Federal Rules of Civil Procedure, leave to amend
9 should be freely granted when justice so requires." *M/V American*
10 *Queen v. San Diego Marine Constr. Corp.*, 708 F.2d 1483, 1492 (9th
11 Cir.1983). "This strong policy toward permitting the amendment of
12 pleadings, however, must be tempered with considerations of 'undue
13 delay, bad faith or dilatory motive on the part of the movant,
14 repeated failure to cure deficiencies by amendments previously
15 allowed, undue prejudice to the opposing party by virtue of allowance
16 of the amendment, futility of amendment, etc.'" *Foman v. Davis*, 371
17 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222 (1962).

18 Plaintiff argues, citing *DCD Programs, Ltd. v. Leighton*, 833 F.2d
19 183, 187-88 (9th Cir. 1987), that no undue prejudice will result from
20 allowing him to amend his Complaint. The Ninth Circuit has held that
21 when a case is still in the discovery stage, with no trial date
22 pending, and no pretrial conference has been scheduled, no prejudice
23 to the opposing party will result from an amended complaint. Plaintiff
24 concludes Defendants will not suffer prejudice if this Court allows
25 leave to amend his complaint because (1) the discovery stage of this
26 case has not begun, (2) neither defendant has filed an answer to

1 Plaintiff's Complaint, (3) the Court has not yet had the opportunity
2 to issue a Scheduling Order, and (4) no trial date is pending. ECF
3 No. 32, at 3-4.

4 Defendant United States has filed an opposition to Plaintiff's
5 motion for leave to file an amended complaint. Defendant United
6 States argues that Plaintiff has simply re-labeled existing causes of
7 action. Defendant United States asserts that the Ninth Circuit has
8 specifically addressed motions to amend that simply re-labeled
9 existing causes of action: "We have held that a district court does
10 not abuse its discretion by denying a motion to amend a complaint . .
11 . when the movant presented no new facts but only 'new theories' and
12 'provided no satisfactory explanation for his failure to fully develop
13 his contentions originally." *Allen v. City of Beverly Hills*, 911 F.2d
14 367, 374 (9th Cir. 1990), citing, *Vincent v. Trend Western Technical*
15 *Corp.*, 828 F.2d 563, 570-71 (9th Cir. 1987), quoting, *Stein v. United*
16 *Artists Corp.*, 691 F.2d 885, 898 (9th Cir. 1982).

17 III. Analysis

18 Plaintiff's original complaint contains four causes of action
19 addressed to the United States: (1) Colville Tribes' Negligent
20 Supervision of Inherently Dangerous Work; (2) Bureau of Indian
21 Affairs' Negligent Supervision of Inherently Dangerous Work; (3)
22 Colville Tribes' Negligent Signature of Contract Without Proof of
23 Insurance Attached; and (4) Bureau of Indian Affairs' Negligent
24 Signature of Contract Without Proof of Insurance Attached. ECF No. 1.
25 Plaintiff seeks to "rephrase" his "Negligent Signing of a Contract"
26 claim to "Negligent Selection and Retention of an Independent

1 Contractor" and "Breach of a Duty to Provide Workers' Compensation
2 Insurance" claims. Plaintiff now seeks to add claims for "Breach of a
3 Duty to Provide a Safe Workplace" and "Negligence in Creating a
4 Hazardous Workplace."

5 Defendant United States argues the last two causes of action
6 appear to be the same as the original "Negligent Supervision of
7 Inherently Dangerous Work" claims. The United States incorporates by
8 reference its previous briefing provided during the summary judgment
9 proceedings to support dismissal of the new claims.

10 The Court notes Plaintiff filed a motion for leave to amend his
11 complaint with the benefit of two rounds of motion to dismiss
12 briefing. With the exception of alleging "Breach of a Duty to Provide
13 a Safe Workplace" and "Negligence in Creating a Hazardous Workplace"
14 as separate causes of action against the defendants, Plaintiff's
15 proposed amended complaint is not substantially different from his
16 original Complaint.

17 The grounds for dismissal raised by the Government are pf
18 significant concern to the Court and may yet prove dispositive.
19 However, because Plaintiff should be given a reasonable opportunity to
20 develop facts which may support his claims in this case, the motion to
21 file an amended complaint is granted. At such time as basic discovery
22 concerning issues raised by the Government's motion is reasonably
23 complete, nothing contained herein shall preclude the Government from
24 asking this Court to again consider whether this case should be
25 dismissed in whole, or in part.

26 ///

1 **IT IS ORDERED:**

2 1. Plaintiffs' Motion for Leave to File Amended Complaint (ECF No.
3 30) filed January 4, 2012, is **GRANTED. Plaintiff is directed to file the**
4 **Amended Complaint.**

5 2. Defendant United States' Motion to Dismiss, or in the
6 Alternative, Motion For Summary Judgment (ECF No. 9) and Defendant Innes'
7 Motion to Dismiss (ECF No. 7) are denied as presently moot but without
8 prejudice to renew hereafter in accord with the foregoing order.

9 3. Plaintiff's Motion to Strike Reply Memorandum (ECF No. 23) is
10 **DENIED.**

11 **IT IS SO ORDERED.** The District Court Executive is directed to enter
12 this Order and provide copies to counsel.

13 **DATED** this 9th day of March, 2012.

14 ***s/Lonny R. Suko***

15 _____
16 LONNY R. SUKO
 United States District Judge